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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re MALIA M., a Person Coming  
Under the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

CLOVER R.,

Defendant and Appellant.

C049322

(Super. Ct. No. JD221336)

Appellant Clover R., mother of the minor, appeals from the order of the juvenile court placing the minor in the home of the father and transferring jurisdiction of the case back to the father's county of residence. (Welf. & Inst. Code,<sup>1</sup> § 395.)

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Appellant contends the orders must be reversed because they were not supported by substantial evidence. We affirm.

#### BACKGROUND

On August 30, 2004, the Santa Cruz County Human Resources Agency filed a section 300 petition on behalf of the four-year-old minor. The petition alleged the minor had been taken into protective custody on August 26, 2004, after mother was transported to a hospital for psychiatric assessment because of her attempt to commit suicide by setting herself on fire. The petition further alleged that the child had witnessed mother's attempted suicide and also had seen mother attempt to light father's bedroom and/or bed on fire, and that the minor was scared. The petition further alleged that mother and father had a history of domestic violence as evidenced by father's convictions in 2001 and 2003 for battery upon mother. Finally, the petition alleged that mother had a mental illness and father failed to protect the child from the danger created by mother's unstable mental health.

A detention hearing was held on August 31, 2004, which resulted in the removal of the minor from both parents' care and custody. According to the jurisdictional report, mother and father were divorced and mother had been awarded sole physical and legal custody of the minor. Father was on informal probation due to his 2003 conviction for spousal battery against mother and he was enrolled in a batterer's intervention program. Father had custody of his other daughter, S.B. Mother resided in Sacramento and had been visiting father in Santa Cruz with

the minor when she became suicidal and attempted to set herself and father's bedroom on fire. Mother was placed on a section 5150 hold and transported to the hospital.

After her release, mother made another suicide attempt and was readmitted to the hospital on another section 5150 hold. There had also been an earlier April 2004, incident when mother chased several pedestrians in her car, striking one, and then got out of her car and continued to attack one of the pedestrians. The minor was in the car with mother at the time of the incident.

Based on this information, the Santa Cruz County juvenile court sustained the section 300 petition, ordered the minor to remain in foster care, and transferred the case to Sacramento County for disposition.

A dispositional/transfer-in report was filed by the Sacramento County Department of Health and Human Services (DHHS) on November 30, 2004. The report stated mother was residing in a nicely maintained two-bedroom house in Sacramento and had been visiting the minor once a week. Mother reported she had recently obtained a new job, had completed three WEAVE (a program for battered women) drop-in groups, was taking her medications regularly, and was receiving services through Kaiser's Intensive Outpatient Program, although the social worker was unable to verify this information. Mother denied any criminal or mental health history and denied the fire-setting incident in Santa Cruz had been a suicide attempt.

The report also stated father still resided in Santa Cruz, had stable employment, was on informal probation, and was participating in a batterer's intervention program. Father also stated he was attending an anger management program and was scheduled to complete the program on November 24, 2004. Father's participation in the batterer's intervention program was verified and the social worker was able to confirm that he had attended 45 sessions and his overall participation was "excellent." A report from the anger management program indicated that father "demonstrated exemplary accountability for his actions and increased self-awareness and understanding of interpersonal dynamics and power and control. He is clearly very concerned regarding the safety and welfare of his children. It is believed that he is able to provide safe parenting for them." According to a visit supervisor in Santa Cruz County, both parents were visiting the minor and both were appropriate.

The dispositional/transfer-in report concluded with a recommendation that the transfer-in be accepted and that the minor be adjudged a dependent of the Sacramento County Superior Court. The report further recommended that the minor remain in foster care while both parents receive reunification services. Recommended reunification services for mother included mental health counseling, a psychological evaluation, psychotropic medication monitoring, domestic violence counseling through WEAVE, and individual counseling. Recommended reunification services for father included individual counseling and continued participation in a batterer's intervention program.

After several continuances for various reasons, the dispositional/transfer-in hearing was finally held on January 25, 2005. At the hearing, father (through his counsel) reported that he had completed his 52-week domestic violence program and that his progress report said he had demonstrated exemplary accountability for his actions and increased self-awareness and understanding of interpersonal dynamics and control, that he was clearly very concerned for the safety and welfare of his children and that he was able to provide safe parenting for them. Father's counsel said that, in light of this information, it was unclear whether the court could even find there was clear and convincing evidence to remove the minor from father's care, but that father would submit on the DHHS's recommendation for removal on the condition that an appearance progress report would be scheduled within 60 days to determine whether the minor could be returned to him. Hearing no objection to father's request, the court adopted DHHS's findings and recommendations as orders of the court and scheduled an appearance progress hearing for March 8, 2005, to address whether the minor should be returned to father.

On February 17, 2005, a progress report was filed with the court. The report provided an update on mother's psychological evaluation and also stated that the minor had consistently told the social worker she wanted to live with her father and not her mother. The report confirmed that father had completed his 52-week anger management program, he was currently attending individual counseling, and he was employed. The social worker

had conducted a home visit at the father's residence in Santa Cruz on February 11, 2005, and found the home to be a suitable placement for the minor. Father's daughter, S.B., was well cared for and had a close relationship with the minor. Based upon her evaluation, the social worker reconsidered placement of the minor in father's home. After the home visit was conducted, however, father informed the social worker that his relatives with whom he resided did not want to get involved with Child Protective Services. Accordingly, father immediately began seeking alternative housing separate and apart from his relatives and seeking day care for the minor. The social worker concluded that placement in father's home when he secured housing would be appropriate.

At the March 8, 2005, progress hearing, the social worker left before the hearing began. At the hearing, county counsel informed the court that, prior to the social worker's departure, she had provided updated information to counsel. Counsel told the court that the social worker informed counsel that father had secured his own apartment, that the social worker had visited and evaluated the apartment, and that the social worker found father's home appropriate for placement. Accordingly, DHHS was recommending placement of the minor with her father. Father's residence was in Santa Cruz County and counsel said the social worker was in support of having the case transferred to that county as well. Mother, through her counsel, objected to the recommendation that the minor be placed with father and that the case be transferred to Santa Cruz County. She did not,

however, object to the evidence or manner in which the evidence of father's current living arrangements and suitability for placement had been presented to the court.

After hearing from all counsel, the court ordered the minor placed with her father under the supervision of DHHS and transferred the case to Santa Cruz County where father resided.

#### DISCUSSION

Mother contends the juvenile court's orders placing the minor in father's home and transferring jurisdiction of the case to father's county of residence must be reversed because they were not supported by substantial evidence. We disagree.

When the sufficiency of the evidence to support a finding is challenged on appeal, even where the standard of proof is clear and convincing, the reviewing court must determine if there is any substantial evidence, i.e., evidence which is reasonable, credible and of solid value, to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

At the January 25, 2005, dispositional proceeding, the court removed the minor from her parents' care and found the parents had partially complied with the case plan and the extent of progress made by the parents toward alleviating or mitigating the causes necessitating placement had been minimal. A few weeks later, the February 17, 2005, progress report stated that father had completed his 52-week anger management program, he was currently attending individual counseling, and he was

employed. The report concluded that if father found new housing, placement with him would be appropriate. By the time of the March 8, 2005, hearing, county counsel told the court that the social worker had visited and evaluated father's new residence, found it appropriate, and recommended placement. These facts support the court's order.

Appellant offers several reasons for her contention that the court's order placing the minor with father was not supported by substantial evidence. First, reciting the rule that unsworn statements of counsel are not evidence, appellant argues that county counsel's representation to the court regarding the social worker's update did not constitute evidence. (See *People v. Wallace* 33 Cal.4th 738, 754, fn. 3.) Therefore, appellant contends there was no evidence to support a finding that return of the minor to the father would not create a substantial risk of harm.

We do not construe county counsel's representations to the court as unsworn testimony, but rather as an offer of proof of how the social worker, who had left the hearing early, would testify if called as a witness or would provide in an updated progress report. Although "[a]n offer of proof is not evidence" (*Mundell v. Dept. Alcoholic Bev. Control* (1962) 211 Cal.App.2d 231, 239), appellant did not object to the court's consideration of the social worker's testimony by way of an offer of proof. Appellant thereby forfeited any objection to the informal procedure used by the court during the hearing.



Next, appellant argues that not only are counsel's statements not evidence, but the court did not receive the February 17, 2005, progress report into evidence and did not specifically state on the record that it had considered the report. Therefore, she argues, that the evidence in the report was not before the court either.

The progress report was filed with the court. While the juvenile court did not state on the record that it considered the report, we presume the court performed its functions in the absence of record evidence showing otherwise. (Evid. Code, § 664.) Moreover, the record supports this presumption. The transfer order, signed by the juvenile court referee, recites that "[t]he court has read and considered the report of the social worker" and "other relevant evidence."

Finally, appellant argues that even if the February 17, 2005, progress report was in evidence, it does not support the court's order placing the minor with father because it shows that father did not yet have suitable housing. This argument fails. The progress report concluded that placement in father's home when he secured housing would be appropriate. As we have explained, by the time of the hearing, county counsel made an offer of proof that the social worker would testify father had found a new apartment and that it was suitable for placement. Accordingly, the evidence supported the juvenile court's orders for placement with father and transfer to Santa Cruz County.

DISPOSITION

The judgment (orders of the juvenile court) is affirmed.

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ROBIE , J.

We concur:

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SCOTLAND , P.J.

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CANTIL-SAKAUYE , J.